

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK CARTER,

Petitioner,

Case No. 17-11787

vs.

HON. GEORGE CARAM STEEH

RANDALL HAAS,

Respondent.

_____/

ORDER GRANTING PETITIONER'S MOTION TO
MODIFY TERMS OF ABEYANCE ORDER (DOC. 5)

Petitioner Mark Carter filed a petition for writ of habeas corpus on June 5, 2017. (Doc. 1). That same day, Carter filed a motion to stay his petition. (Doc. 2). The Court granted Carter's motion, stayed the habeas petition, and held further proceedings in abeyance. (Doc. 4 at PageID 136). The Order stated that if Carter failed "to file a motion for relief from judgment with the state trial court within sixty days from the date of this order, the Court will dismiss the petition for writ of habeas corpus without prejudice." (*Id.*). Petitioner was further directed to "file a motion to lift the stay and an amended petition in this Court within sixty days after the conclusion of the state court proceedings." (Doc. 4 at PageID 137).

Carter thereafter filed a “motion to modify terms of abeyance order and emergency consideration,” (Doc. 5), and an “emergency motion for immediate consideration of motion to modify stay,” (Doc. 6). Carter asserted that he had already filed a motion for relief from judgment and was prohibited from filing another until the Michigan Supreme Court heard his appeal. Carter asked that the terms of the Stay and Abeyance Order be altered to strike the language requiring him to file a motion for relief from judgment with the state trial court within 60 days of the June 15, 2017 order. Carter’s motion, (Doc. 4), is GRANTED. Carter’s subsequent motion, (Doc. 5), is, therefore, denied as MOOT.

The State Court record suggests that the Michigan Supreme Court has since made a decision in Carter’s state court case. It is not clear if Carter intends to participate in any further state court proceedings to raise the “additional, unexhausted claims” mentioned in the June 15, 2017 order. (Doc. 4 at PageID 134). The Court therefore alters the terms of the June 15, 2017 order and hereby ORDERS that Carter shall exhaust his state remedies within 90 days of the instant order. If Carter requires more time, he must file a motion to modify the terms of this order. The Court further orders Carter to file a motion to lift the stay and an amended habeas

petition in this Court within sixty days after the conclusion of the state court proceedings.

IT IS SO ORDERED.

Dated: June 12, 2018

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Certificate of Service

Copies of this Opinion and Order were served upon attorneys of record and also on Mark Carter #215595, Muskegon Correctional Facility, 2400 S. Sheridan, Muskegon, MI 49442 on June 12, 2018, by electronic and/or ordinary mail.

s/Barbara Radke
Deputy Clerk